Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon

With approvals as of August 1999

This document was prepared pursuant to provisions of
Yukon First Nation Final Agreements
and the Yukon Transboundary Agreement with the Gwich'in Tribal Council

Yukon
Tourism
Heritage Branch

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Introduction and Background

The treatment of every burial site requires respect. Legislation of various types protects burial sites and cemeteries from being disturbed. Government agencies and First Nations keep and consult records of known sites so that land use plans or proposals can avoid such sites.

There are many historic and First Nation graves in the Yukon however which are no longer marked and which may be disturbed accidentally through land use or development. Other sites may be disturbed by natural forces, such as erosion, leading to the exposure of human remains.

As more people travel in backcountry areas, for work or pleasure, it is expected that the number of such discoveries may increase. It is important therefore to have guidelines for reporting, investigating and managing such sites in a coordinated and effective manner, to give them proper respect.

Yukon First Nation (YFN) Final Agreements (Section 13.9.0) and the transboundary agreement with the Gwich'in Tribal Council (Tetlit Gwich'in) (Section 9.5) require the development of procedures to protect and manage YFN or TG burial sites, and specify certain actions when such sites are discovered.

Consistent with these obligations, these guidelines were developed at two workshops held jointly in March and October 1998, involving First Nation Elders, heritage and implementation staff, the RCMP, Coroner and other Yukon and federal government officials.

Purpose

To provide direction on the reporting, identification, treatment and disposition of human remains found outside of recognized cemeteries in the Yukon, to ensure these remains are respected and protected consistent with legislation and Yukon land claims agreements.

Scope and Application

These guidelines apply to anyone who discovers human remains or grave goods outside of recognized cemeteries in the Yukon, and to the Yukon, Federal and First Nation government officials involved in protecting and caring for such sites.

The guidelines reflect existing practices in many ways. They do not replace legislation or regulations protecting burial sites, but are intended to integrate obligations contained in Yukon land claim agreements with land use permitting regimes and the Development Assessment Process . These guidelines may apply on Settlement Lands at the discretion of each First Nation. Government approval is required for management plans for sites on non-Settlement Land.

Existing known burial sites that are marked or otherwise recorded are protected by existing legislation. Management plans for these sites may be developed on a case by case basis.

Burial sites discovered within the boundaries of a designated heritage site may be subject to the management plan for that site.

The guidelines do not apply within National Historic Sites or National Parks. Parks Canada has its own guidelines respecting burial sites and human remains.

Evaluation and Revision of Guidelines

The implementation of these guidelines will be evaluated as necessary to ensure that they are fulfilling their purpose.

GUIDING PRINCIPLES

All human remains, and items found at graves (grave offerings, markers etc.) shall be treated with respect and dignity regardless of their cultural affiliation.

Actions taken following the discovery of sites will be consistent with Yukon and transboundary land claim agreement provisions respecting Yukon First Nation and Tetlit Gwich'in Burial Sites.

Each discovery will be handled on a case by case basis in consultation with the affected parties, in a coordinated and timely manner.

Definitions - see Appendix 1
References - see Appendix 2
Land claims provisions - see Appendix 3

Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites

See also Figure 1.

These guidelines cover five steps: discovery and notification; site protection and investigation; investigation and reporting; and site disposition or management agreements. A final step, arbitration, is provided for where no disposition agreement is reached.

1. Discovery and Notification

If human burial remains are accidentally discovered the following guidelines apply:

a) The finder will immediately cease any further activity at the site and report the site to the RCMP.

b) *If the finder is operating under a land use licence or permit*, the site must also be reported immediately to the land manager/permitting authority, as set out on the permit. The land manager/permitting authority shall confirm that the site is reported to the RCMP.

c) Based on the information it receives, the RCMP will notify: 1) the Coroner's office if the site is of a forensic or criminal nature; or 2) both the First Nation(s) in whose Traditional Territory the Site is located and the Heritage Branch, if the site is a suspected historic or First Nation burial site.

2. Site Protection and Identification

a) the land manager/permitting authority shall take reasonable measures to protect the site from environmental factors and any form of unauthorized interference or disturbance.

b) based on the evidence reported at the scene, the RCMP/Coroner will investigate the site and make a preliminary determination as to the nature of the remains.

c) *if the site is of a criminal or forensic nature* (potential crime scene or missing person), then the Coroner's office and police will assume authority over the site/remains.

d) Heritage Branch may recommend that an archaeologist assist police or coroner in the preliminary assessment of the site.

e) *If the site is* ***not*** *of police/coroner interest* then the Director, Heritage Branch, the affected First Nation(s) and the land manager will assume interim responsibility for protection and investigation of the site. If it's a suspected First Nation site, the Heritage Branch and First Nation would assume this responsibility.

f) the Director, Heritage Branch, the affected First Nation(s) and land manager shall take reasonable measures to restrict access and ensure that the human remains and any grave offerings are not further disturbed pending the investigation and identification of the remains. The RCMP may be consulted about protecting the site.

Figure 1

Guidelines respecting the Discovery of Human Remains and First Nation* Burial Sites

2. Site Protection and Investigation
-protection/no disturbance or access

If not a criminal matter, Heritage Branch takes lead with affected FN or transboundary group. RCMP may assist if requested.

- *First Nation, Minister*
- *permitting authority - person may continue activity*

with FN consent. If consent is not provided, proceed according to terms and conditions of arbitrator(UFA 26.7.0 TG Ch.18)

or

- *rebury, relocate or remove remains*
- *restrict/specify access if necessary and possible*
- *may designate existing or new site as burial site/cemetery or heritage site*
- *management plan (jointly prepared/approved by FN and Government on Non-Settlement Lands)*

Maps, inventories, reports, plans, agreements.

**the Tetlit Gwich'in will be involved in steps to protect and manage Tetlit Gwich'in burial sites discovered within their Primary Use Area (Fort McPherson Group Trapping area within the Peel River Basin).*

g) Where human remains are at risk of being destroyed or damaged, the Minister of Tourism for Heritage may issue a stop work order prohibiting any further activities and may make an agreement with the First Nation or the Tetlit Gwich'in or land owner or user for any investigation, excavation, examination and preservation and removal of the remains, consistent with land claim provisions. (s.72, *Historic Resources Act- This would address concerns about unknown remains.)*

Existing site inventories, land use records, affected First Nations and community elders, and military authorities, should be consulted as soon as possible about possible identification of the remains.

Some examination of the site/remains may be required to determine its cultural affiliation and age, and whether or not the site is modern or historic.

3. Investigation and Reporting

a) The Heritage Branch/land manager will direct an archaeologist or qualified examiner to carry out an investigation under any required permits, in consultation with the affected First Nation and other affected parties, to make an initial report citing, if possible*, the cultural affiliation of the human remains.

b) Within a reasonable time to be specified by the Minister, and the affected First Nation(s), the archaeologist or qualified examiner shall deliver a written report and any notification not yet made, to:

- the Minister, and the affected First Nation(s) if appropriate;
- the Director of the Heritage Branch;
- the land manager/permitting authority;
- any other representative of the interred, if known.

c) The written report shall attempt *to identify:

- the representative group of the interred;
- the geographic boundaries of the site;
- the grave offerings or other heritage resources that may be associated with the remains or the site.

d) The archaeologist or examiner may, with the agreement of the proper authority and the representative of the interred, if known, remove all or part of the human remains for further analysis or for temporary custody where the remains may otherwise be at risk.

e) Any exhumation, examination and reburial of human remains from a YFN/TG burial site shall be at the discretion of the affected YFN/TG; and if ordered by an arbitrator pursuant to land claim provisions, will be done or supervised by the YFN or Tetlit Gwich'in.

*it is often difficult to determine the cultural ancestry or affiliation of fragmentary human remains

3.1 Reporting

a) If the site is determined to be a Yukon First Nation Burial Site, or Tetlit Gwich'in burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains. *

b) A person carrying out Government or First Nation authorized activity where a First Nation site is discovered can continue that activity with the consent of the First Nation in whose Traditional Territory the Yukon site is located. The consent of the Tetlit Gwich'in is required if the site is in the Tetlit Gwich'in primary use area. If consent is denied, the person can seek terms and conditions from an arbitrator about continuing the activity (see Section 5).

c) If after the final report, the human remains are found to be those of a different aboriginal people than those mentioned previously, the proper authority of that group shall be notified in order that they may assume the role of the representative.

d) Where a site is **not** found to be a Yukon First Nation or Tetlit Gwich'in burial site, or a military or mariner's burial site, the Director, Heritage Branch may publish notice of the discovery in a newspaper or other public notice seeking information on the remains.

4. Site Disposition Agreement (Management Plan)

4.1 When the site or remains are identified

a) The site shall not be disturbed and the Director, Heritage Branch or First Nation if on Settlement Land, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred.

b) If the site is a Yukon First Nation Burial Site or a Tetlit Gwich'in burial site on non-settlement land, there must be joint approval of the site management plan by the Yukon First Nation in whose Traditional Territory the site is located and the Government. If the site is a Tetlit Gwich'in burial site located off Tetlit Gwich'in land but in the primary use area, the management plan must be jointly approved by the Tetlit Gwich'in and the Government.

c) Decisions regarding reburial, relocation or other disposition should be determined on a case by case basis in consultation with those concerned and in a timely manner.

Site disposition agreements shall determine such things as:
1. the interim care of the human remains;

2. the scope and extent of analysis to be performed on the human remains, if any;
3. the exact location of the place where the human remains are to remain or to be interred;
4. the style and manner of disinterment, if applicable;
5. the style and manner of reinterment, if applicable;
6. the time period in which disinterment and reinterment is to take place;
7. the procedures relating to, and the final disposition of any grave offerings discovered with the human remains and any additional analysis of them;
8. the provision for future maintenance of the cemetery or site where the human remains are to be located;
9. access to the site and ways to prevent disturbance;
10. any other issue agreed upon.

*it is often difficult to determine the cultural ancestry or affiliation of fragmentary human remains

4.2 When no representative is identified or no disposition is specified:

If disposition is not specified by a representative, or the remains are not claimed or no affiliation is established within a reasonable time, the Minister, or First Nation if on Settlement Land, shall with the necessary permits and approvals provide for the following disposition:

a) cover and leave the remains where they were found and have the site recorded as a burial site/ heritage site, if on land suitable for a burial site; or
b) have the remains disinterred and reinterred in the nearest appropriate cemetery; or
c) remove the remains from the site for analysis and may have them reinterred in a recognized cemetery or;
d) may act as the temporary repository of the remains.

(Where the remains were found on Settlement Land but are not considered First Nations remains, the Government may remove the remains in consultation with the First Nation.)

5. Arbitration

a) If no disposition agreement or management plan is reached within a reasonable time the matter may be referred to arbitration for settlement. If this matter concerns a Yukon First Nation Burial Site, this shall be done pursuant to 26.7.0 of the UFA; or Chapter 18, if the matter concerns a Tetlit Gwich'in site in the primary use area.

6. Records

a) A record of the site and a report of the discovery and disposition plan shall by kept by the Government and the affected First Nation(s)/representative for future reference to protect the site.

b) Access to information about discovered sites will be addressed in any site management plan developed under these guidelines, and will be protected under the *Access to Information and Protection of Privacy Act*, and the *Historic Resources Act* or *any similar First Nations legislation.*

Appendix 1

Definitions

burial site

the location of any human grave or remains that have been interred, cremated or otherwise placed, and include ossuaries, single burials, multiple burials; rock cairns; cave or cache burials etc. not situated within a cemetery

First Nation Burial Site

This refers to a Yukon First Nation Burial Site or a Tetlit Gwich'in burial site, which is defined as: a place outside a recognized cemetery where the remains of a cultural ancestor of a Yukon Indian Person (or the Tetlit Gwich'in) have been interred, cremated or otherwise placed."

[from the Definitions section of the *Umbrella Final Agreement for the Council for Yukon Indians (now Council of Yukon First Nations) and the Transboundary Agreement between Canada and the Gwich'in Tribal Council*]

human remains

mean the remains of a dead human body and include partial skeletons, bones, cremated remains and complete human bodies that are found outside a recognized cemetery" *(adapted from Historic Resources Act)*

grave offering

any object or objects associated with the human remains which may reflect the religious practices, customs or belief system of the interred.

historic

under the Historic Resources Act this generally means something older than 45 years.

land manager

Agency responsible for the administration of the land on which the site is located. For example, currently territorial parks are managed by Yukon Parks and Outdoor Recreation; gravel pits and rural airports are administered by Community and Transportation Services. Settlement Land is administered by the First Nation. Private land is administered by the land owner. (Burial sites may not be disturbed on any land without proper authorization.)

Recognized cemetery

a defined area of land that is set aside for the burial of human bodies.

representative

means a descendant of the interred or of the person whose remains are found, or where no descendant survives or is identified, an official representative of the appropriate First Nation in whose Traditional Territory the burial site is located or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by the location or mode of burial.

Where no representative can be determined the Minister shall act as the representative on Non-Settlement Lands and on Settlement Lands at the discretion and with the consent of the First Nation

representative group

means the appropriate Yukon First Nation or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by mode and style of burial which is willing to act as a representative.

Site disposition agreement

means a written agreement to be reached between the Director of the Heritage Branch and the representative of the interred regarding the disposition of the remains, including any disinterment and reinterment, and management plan

Management plan

means a plan to identify the roles of the representative, Government and land owner or manager respecting the care and protection of the site, including a consideration of site records, site access, and ways to protect a site from disturbance.

Appendix 2

References

The following include requirements to protect burial sites and were considered in the development of these Guidelines.

Umbrella and Yukon First Nation Final Agreements, Sections 13.9.0 and 26.7.0, and Implementation Plans
Yukon Transboundary Agreement (Gwich'in Tribal Council), Sections 9 and 18, and Implementation Plan
Yukon Historic Resources Act, Part 6
Criminal Code
Cemeteries and Burial Sites Act
Coroner's Act
Territorial Land Use Regulations
Yukon Archaeological Sites Regulations
Yukon Quartz Mining Act, and Regulations
Yukon Placer Mining Act, and Regulations
Yukon Surface Rights Act
Vital Statistics Act

Appendix 3

Land Claims Provisions Relating to Burial Sites

13.9.0 Yukon First Nation Burial Sites*

13.9.1 Government and Yukon First Nations shall each establish procedures to manage and protect Yukon First Nation Burial Sites which shall:

13.9.1.1 restrict access to Yukon First Nation Burial Sites to preserve the dignity of the Yukon First Nation Burial Sites;

13.9.1.2 where the Yukon First Nation Burial Site is on Non-Settlement Land, require the joint approval of Government and the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located for any management plans for the Yukon First Nation Burial Site; and

13.9.1.3 provide that, subject to 13.9.2, where a Yukon First Nation Burial Site is discovered, the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located shall be informed, and the Yukon First Nation Burial Site shall not be further disturbed.

13.9.2 Where a Person discovers a Yukon First Nation Burial Site in the course of carrying on an activity authorized by Government or a Yukon First Nation, as the case may be, that Person may carry on the activity with the agreement of the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located.

13.9.3 In the absence of agreement under 13.9.2, the Person may refer the dispute to arbitration under 26.7.0 for a determination of the terms and conditions upon which the Yukon First Nation Burial Site may be further disturbed.

13.9.4 Any exhumation, examination, and reburial of human remains from a Yukon First Nation Burial Site ordered by an arbitrator under 13.9.3 shall be done by, or under the supervision of, that Yukon First Nation.

13.9.5 Except as provided in 13.9.2 to 13.9.4, any exhumation, scientific examination and reburial of remains from Yukon First Nation Burial Sites shall be at the discretion of the affected Yukon First Nation.

13.9.6 The management of burial sites of a transboundary claimant group in the Yukon shall be addressed in that Transboundary Agreement.

*This is an excerpt from the Umbrella Final Agreement between Canada, the Council for Yukon Indians and the Government of the Yukon (1993),Ch. 13, pp. 128-129, and subsequent Yukon First Nation Final Agreements.

9.5. Tetlit Gwich'in Burial Sites*

9.5.1 Government and Tetlit Gwich'in shall each establish procedures to manage and protect Tetlit Gwich'in burial sites which shall:

(a) restrict access to Tetlit Gwich'in burial sites to preserve the dignity of Tetlit Gwich'in burial sites;

(b) where the Tetlit Gwich'in burial site is outside the primary use area *(Fort McPherson Group Trapping Area)*, require the joint approval of government and the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located for any management plans for the Tetlit Gwich'in burial site;

(c) where the Tetlit Gwich'in burial site is on land in the primary use area which is not Tetlit Gwich'in Yukon land, require the joint approval of government and the Tetlit Gwich'in for any management plans for the Tetlit Gwich'in burial site; and

(d) provide that, subject to 9.5.2, where a Tetlit Gwich'in burial site is discovered, the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in, if the Tetlit Gwich'in burial site is in the primary use area, shall be informed and the Tetlit Gwich'in burial site shall not be further disturbed.

9.5.2 Where a person discovers a Tetlit Gwich'in burial site in the course of carrying on an activity authorized by government, a Yukon First Nation or the Tetlit Gwich'in, as the case may be, that person may carry on the activity with the agreement of the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in if the Tetlit Gwich'in burial site is in the primary use area.

9.5.3 In the absence of agreement under 9.5.2, the person may refer the dispute to arbitration under chapter 18 of this appendix for a determination of the terms and conditions upon which the Tetlit Gwich'in burial site may be further disturbed.

9.5.4 Any exhumation, examination and reburial of human remains from a Tetlit Gwich'in burial site ordered by an arbitrator under 9.5.3 shall be done by, or under the supervision of, the Tetlit Gwich'in.

9.5.5. Except as provided in 9.5.2 to 9.5.4, any exhumation, scientific examination and reburial of remains from Tetlit Gwich'in burial sites shall be at the discretion of the Tetlit Gwich'in.

*This is an excerpt from Appendix C - Yukon Transboundary Agreement between Canada and the Gwich'in Tribal Council, (1992), p. 32.